

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9316 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHUVA TALUKA PRATHMIK SHIKSHAK SANGH

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

MR KB PUJARA for Petitioner

MR KH BAXI for Respondent No. 1

SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, Mahuva Taluka Prathmik Shikshak Sangh, filed this special civil application espousing the cause of its members, the primary teachers, serving under the respondent in Mahuva Taluka regarding House Rent Allowance.

3. 193 primary teachers, the members of the petitioner-association were given the benefit of House Rent Allowance and they were recipient of the same. The rates of House Rent Allowance were revised under the Government Resolution dated 1st June, 1986 with effect from the very date. All the 193 members of the petitioner-association were given the benefit of the revised House Rent Allowance under the order dated 7-12-1991 with effect from 1-11-1991. So the grievance has been made against this order and claim has been made for revised H.R.A. from 1st June, 1986. That grievance came to be accepted and under the order dated 2-6-1992 and the benefit of revised H.R.A. was given to the 193 members of the petitioner-association from 1-6-1986.

4. The audit party of the Local Account Fund appears to have raised an objection against giving of the H.R.A. to the members of the petitioner-association at enhanced rates. This objection was explained by the respondent No.1 with a request to drop the same but it appears that, that objection was not dropped and accordingly under the order dated 21st June, 1994 the respondent No.1 has directed that the members of the petitioner-association be paid the H.R.A. at the rates of Rs.50/- and Rs.100/- instead of Rs.120/- and 220/- and further direction has been given for recovery of the excess amount paid in the installments of Rs.500/- per month. Hence, this special civil application before this Court.

5. The respondents have not filed reply to the special civil application.

6. The counsel for the petitioner contended that the order dated 21st June, 1994 has been made by the respondent No.1 without giving any notice or opportunity of hearing to the members of the petitioner-association or even the association was not called for hearing. It is a case where, what the counsel for the petitioner contended that, the respondent No.1 sought to take away the benefit of enhanced rates of H.R.A. which has resulted in civil consequence and even if it is taken to be an administrative matter still the principles of natural justice have to be followed. On merits also the counsel for the petitioner contended that the denial of benefit of enhanced H.R.A. to the petitioner is wholly arbitrary and unjustified.

7. On the other hand, the counsel for the respondent submitted that the order dated 21st June, 1994 is not of its own action but as the audit party of the Local

Account Fund raised an objection the order has been made. The respondent No.1 has in fact supported the case of the petitioner by replying to the objection of the audit party and request has been made for dropping of the same but when it has not been dropped the respondent No.1 had no option except to pass the order for reducing the rates of H.R.A. of the petitioners as well as of recovery of the excess amount paid to them. It has next been contended that even if it is accepted that the order dated 21st June, 1994 has to be passed after hearing the members of the petitioner-association then too the respondent No.1 is helpless as it is not its own action. The petitioner should have impleaded Local Account Fund as a party to this petition.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. Under the order dated 7-12-1991, 193 members of petitioner-association, the primary teachers, were given the benefit of enhanced rates of H.R.A. from 1-11-1991 and by subsequent order dated 2-6-1992 that benefit was given from 1-6-1986. The petitioners were the recipient of that benefit. The arrears were also paid and though the order dated 21st June, 1994 has been passed this Court has protected the petitioners and they are getting H.R.A. at enhanced rates till date. Reduction of H.R.A. has resulted in civil consequence i.e. monetary loss to the members of the petitioner-association and I find sufficient merits in the contention of the counsel for the petitioner that before the authority sought to take away such benefit it has to follow the principles of natural justice. Admittedly, the order dated 21st June, 1994 has been made without giving any notice or opportunity of hearing to the affected primary teachers or to the petitioner-association but at the same time Shri Baxi's contention is also not devoid of any substance. The audit objection is the only base and cause of passing of the order dated 21st June, 1994 by the respondent No.1 and in case the respondent No.1 is directed to hear the affected primary teachers and then pass the order the audit objection will still remain there, and as such, the net result would be of the order against the petitioners. The audit objection can only be dropped by the Local Account Fund and not by the respondent No.1. The counsel for the petitioner is unable to come out of this contention of the counsel for the respondent. Better course would have for the petitioner to implead the Local Account Fund as party to this petition but for the reasons best known to the petitioner it has not thought it fit to join it as a

party. However, after more than three years, I do not consider it necessary that this exercise should be undergone now.

10. The interest of justice will be met in case this special civil application is disposed of with the direction to the respondent No.2 who is in-charge Controller of all these matters to hear the petitioner in the matter of reducing the rates of H.R.A. payable to the members of the petitioner-association, the primary teachers, and only after hearing them appropriate order may be passed. If the respondent No.2 considers that this exercise has to be undergone by the Local Account Fund then the matter may be referred to that authority/officer with all the relevant papers and that authority shall decide the same after hearing the petitioner as well as if the members of the petitioner-association so desire after hearing them. Till this matter is decided by the appropriate authority the interim relief which has been passed by this Court shall continue. This matter has to be decided within six months from the date of receipt of certified copy of this order. In case ultimately the audit objection is sustained then a reasoned order may be passed either by the respondent No.2 or the concerned authority of Local Account Fund and copy of the same may be sent to the petitioner or those teachers who have been heard in the matter. In that eventuality, the interim relief granted by this Court shall continue for one month more from the date of despatch of the order to the petitioner and its other members who have been heard by the authority and thereafter it shall be open to them to take recourse of appropriate legal remedy.

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